

JUDGE HOWELL

LYONS & FLOOD, LLP
65 West 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

07 CV 11390

Attorneys for Defendant
SEABOATS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
YULI CONELY, as Administratrix of the Estate of LEIBE
OCIELE MEDINA, a/k/a CEILE MEDINA, Deceased and
YULI CONELY, Individually, EPHRAIM RIVERA and
RAPHAEL RIVERA,

Plaintiffs,

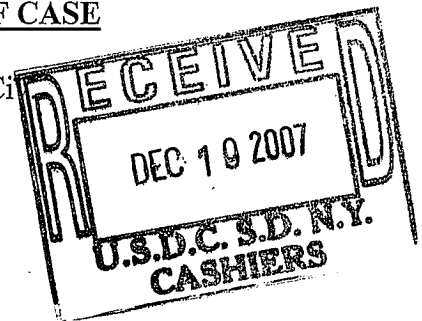
- against -

SEABOATS, INC.,

Defendant.
-----X

ECF CASE

07 Ci



SEABOATS, INC.'S NOTICE OF REMOVAL

TO THE CLERK, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW
YORK

PLEASE TAKE NOTICE that, pursuant to 28 USC §§ 1332, 1441, and 1446, defendant
SEABOATS, INC. ("Seaboats"), by and through its attorneys, Lyons & Flood, LLP, hereby
gives notice of the removal of the action styled YULI CONELY, as Administratrix of the Estate
of LEIBE OCIELE MEDINA, et al. v. SEABOATS, INC. from the Supreme Court of the State
of New York, County of Bronx, Index no. 302638/07, to the United States District Court for the
Southern District of New York and states as follows:

1. On November 9, 2007, plaintiffs, Yuli Conely, as Administratrix of the Estate of
Leibe Ociele Medina, a/k/a Ceile Medina, deceased and Yuli Conely, individually, Ephraim

Rivera, and Raphael Rivera commenced an action by filing a Summons and Verified Complaint in the Supreme Court of the State of New York, County of Bronx captioned YULI CONELY, as Administratrix of the Estate of LEIBE OCIELE MEDINA, a/k/a CEILE MEDINA, Deceased and YULI CONELY, Individually, EPHRAIM RIVERA and RAPHAEL RIVERA, against SEABOATS, INC., Index No. 302638/07. Plaintiffs assert claims for wrongful death, personal injury, and property damage arising from an alleged collision between plaintiffs' pleasure boat and defendant's tank barge.

2. On November 19, 2007, plaintiffs served a copy of the Summons and Verified Complaint on defendant. (A copy of the Summons and Verified Complaint are attached hereto as Exhibit A.)

Grounds For Removal

3. This Court has original jurisdiction pursuant to 28 USC § 1332, as the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00, and there is complete diversity of citizenship between plaintiffs and defendant. Thus, this action may be removed to this Court by defendant pursuant to the provisions of 28 USC §§ 1441 and 1446.

4. Plaintiffs Ephraim Rivera and Raphael Rivera have alleged they both reside at 55 West Moshulu Parkway North, Bronx, New York. (See Exhibit A at ¶¶ 2 and 3.) Plaintiff Yuli Conely has alleged that she resides at 170 Wagon Trail North, Powell, Ohio. (See Exhibit A at ¶ 1.)

5. Defendant, Seaboats, is a Rhode Island corporation. (See Exhibit A at ¶ 4). Upon information and belief, the citizenship of the parties as alleged above existed at the time the underlying action was commenced and remain unchanged at the Notice of Removal was filed.

6. It is facially evident that the amount in controversy exceeds \$75,000.00, exclusive

of interest and costs. As noted above, this is a wrongful death, personal injury, and property damage action suit arising from an alleged collision between plaintiffs' pleasure boat and defendant's tank barge.

7. The Verified Complaint filed in the Supreme Court for the State of New York, County of Bronx, sets forth five causes of action. The first cause of action alleges that plaintiff decedent "was seriously injured" and "sustained conscious pain and suffering and drowned" as a result of the alleged collision and that the decedent's estate has been damaged in an amount in excess of the jurisdictional limits of all lower courts. (See Exhibit A at ¶¶ 26, 27, and 29). The second cause of action alleges that plaintiff Yuli Conely, the daughter of the decedent, William Pulgarin, the son of the decedent, and other decedent's distributees have sustained "pecuniary loss and damage as well as having been deprived of decedent's companionship, consortium and society and otherwise claim damages for her wrongful death" and that these plaintiffs have been damaged in an amount in excess of the jurisdictional limits of all lower courts. (See Exhibit A at ¶¶ 31 and 32).

8. The third cause of action in the Verified Complaint alleges that plaintiff Ephraim Rivera was "seriously injured" as a result of the alleged collision and that he has been damaged in an amount in excess of the jurisdictional limits of all lower courts. (See Exhibit A at ¶¶ 34 and 35). The fourth cause of action alleges that plaintiff Raphael Rivera sustained "property damage" to his boat as a result of the alleged collision and that he has been damaged in an amount in excess of the jurisdictional limits of all lower courts. (See Exhibit A at ¶¶ 37 and 38). The fifth cause of action alleges that plaintiff Raphael Rivera was in the "zone of danger" and suffered "psychological trauma" as a result of the injury to his brother Ephraim Rivera and that he has been damaged in an amount in excess of the jurisdictional limits of all lower courts. (See

Exhibit A at ¶¶ 40-42).

9. In evaluating a complaint that contains this kind of open-ended claim for damages, a court should appraise the amount in controversy according to a reasonable reading of the value of the rights being litigated, and should retain federal jurisdiction if it appears to a “reasonable probability” that the claim is in excess of the statutory jurisdictional amount. United Food & Commercial Workers Union v. Centermart Properties Meriden Square, Inc., 30 F.3d 298, 304-305 (2nd Cir. 1994). Given the totality and extent of the claims set forth in the Verified Complaint, there is no doubt that a “reasonable probability” exists that the claims are in excess of \$75,000.00, exclusive of interest and costs.

Pre-Requisites for Removal Are Satisfied

10. This Notice of Removal is timely filed in accordance with 28 USC § 1446(b) in that it is filed within thirty (30) days after the date Seaboats was served with the Verified Complaint. This case was filed less than 1 year ago pursuant to 28 USC § 1446(b).

11. Venue is proper in this District under 28 USC § 1446(a) because this District includes Bronx County, the county in which the state court action is pending.

12. As required by § 1446(d), a true and correct copy of this Notice of Removal is being promptly served on plaintiffs and on the Clerk of the Supreme Court of the State of New York, County of Bronx.

13. Defendant does not waive any defenses it may have to this action and no statements made herein shall be construed to concede any defenses to this action.

WHEREFORE, defendant prays that this action be removed from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York.

Dated: December 19, 2007

LYONS & FLOOD, LLP
Attorneys for Defendant
SEABOATS, INC.

By: Kirk M. Lyons
Kirk M. Lyons (KL-1568)
65 West 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

U:\kmh\docs\2615003\Pleadings\Notice of Removal -final.doc

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
YULI CONELY, as Administratrix of the Estate of LEIBE
OCIELE MEDINA, a/k/a CEILE MEDINA, Deceased and
YULI CONELY, Individually, EPHRAIM RIVERA and
RAPHAEL RIVERA,

Plaintiffs,

-against-

SEABOATS, INC.,

Defendants.
-----X

Index No. 302638/07

*Plaintiffs designate Bronx
County as the place of trial*

*The basis of the venue is
Plaintiffs' Residence*

Summons

*Plaintiffs Ephraim Rivera and Raphael
Rivera reside at 55 West Mosholu Pkwy
North, Bronx, New York*

To the above name Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 30 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: November 7, 2007

Defendant's address:

Sea Boats, Inc.
9 Church Cove Road
Bristol, RI 02809-5101

A TRUE COPY ATTEST

By: 

FRANK V. FLORIANI

Attorneys for Plaintiff

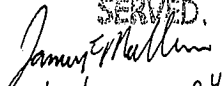
Office and Post Office Address

FRANK V. FLORIANI
SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C.
120 Broadway
New York, New York 10271
(212) 732-9000

SERVED

A TRUE COPY ATTEST

SERVED.


11/19/07 12:41 PM

07 NOV -9 AM 10:40
COUNTY CLERK
BRONX COUNTY

RECEIVED

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ with interest from 20 and the costs of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
YULI CONELY, as Administratrix of the
Estate of LEIBE OCIELE MEDINA, a/k/a
OCIELE MEDINA, Deceased and YULI CONELY,
Individually, EPHRAIM RIVERA and
RAPHAEL RIVERA,

Index No.:

302638-01

Plaintiffs,

-against-

VERIFIED COMPLAINT

SEABOATS, INC.,

Defendant.
-----X

Plaintiffs, by their attorneys, SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C., complaining of the defendants, allege,
upon information and belief, as follows:

1. Yuli Conely, residing at 170 Wagon Trail North, Powell,
Ohio was appointed Administratrix of the estate of Leibe Ociele
Medina, also known as Ociele Medina ("decedent"), pursuant to a
decree of the Surrogate's Court, Bronx County dated October 23,
2007.
2. That on June 10, 2007 and at present Ephraim Rivera
resides at 55 West Mosholu Parkway North, Bronx, New York.
3. That on June 10, 2007 and at present Raphael Rivera
resides at 55 West Mosholu Parkway North, Bronx, New York.
4. That at all times hereinafter mentioned SEABOATS, INC.
was a foreign corporation organized and existing pursuant

07 NOV -9 AM 11:49
COUNTY CLERK
BRONX COUNTY

RECEIVED

laws of the state of Rhode Island and was duly authorized to conduct business in the state of New York.

5. On June 10, 2007, defendant, SEABOATS, INC. owned a certain tug boat bearing the name "Donald C." ("Donald C.").

6. On June 10, 2007, defendant, SEABOATS, INC., owned a certain tank barge bearing the name "Patriot" ("Patriot").

7. On June 10, 2007, the *Patriot*, owned by SEABOATS, INC., was being pushed and/or was otherwise underway due to the assistance of the *Donald C.*

8. On June 10, 2007, the captain of the *Donald C.* was Michael Joseph Mezger, and as such he was in charge of the crew of the *Donald C.* and was responsible for the operation of both the *Donald C.* and the *Patriot*.

9. On June 10, 2007, the *Donald C.* was being operated by its captain, Michael Joseph Mezger.

10. On June 10, 2007, Michael Joseph Mezger was at the helm of the *Donald C.*.

11. On June 10, 2007, Michael Joseph Mezger was an employee of SEABOATS, INC..

12. On June 10, 2007, Michael Joseph Mezger was operating the *Donald C.* in the course of his employment for SEABOATS, INC..

13. On June 10, 2007, the *Donald C.* was pushing the *Patriot* in the Long Island Sound in an area northeast of Sands Point, New York.

14. On June 10, 2007, plaintiff Raphael Rivera owned a certain pleasure craft bearing registration number NY 5148 C ("the Rivera boat").

15. On June 10, 2007, Raphael Rivera was on board the Rivera boat along with decedent and Ephraim Rivera at the aforementioned location.

16. On June 10, 2007, the *Donald C.* pushed the *Patriot* into the Rivera boat.

17. On June 10, 2007, the *Donald C.* failed to post a look out on the *Patriot*.

18. On June 10, 2007, the *Donald C.* failed to signal and/or otherwise warn of its approach to the Rivera boat.

19. On June 10, 2007, at the aforementioned location the Rivera boat had the right of way.

20. On June 10, 2007, it was the obligation of the *Donald C.* and the *Patriot* to yield the right away to the Rivera boat.

21. As a result of the aforementioned collision between the *Donald C.* and the *Patriot* with the Rivera boat, decedent, Raphael Rivera and Ephraim Rivera were thrown into the water.

22. The aforementioned occurred as a result of the negligence, carelessness and recklessness of the defendant in

the ownership, operation, maintenance, management and control of the *Donald C. and the Patriot*.

23. The limitations on liability set forth in CPLR §1601 do not apply.

24. The limitations on liability set forth in CPLR §1601 do not apply by reason of one or more exceptions set forth in CPLR §1602.

FIRST CAUSE OF ACTION

25. Plaintiff Yuli Conely as the administratrix of decedent's estate repeats and realleges paragraphs "1"-"24" as if fully set forth at length herein.

26. As a result of the foregoing decedent was seriously injured.

27. As a result of the foregoing decedent sustained conscious pain and suffering and drowned.

28. As a result of the aforementioned decedent's estate has been damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

SECOND CAUSE OF ACTION

29. Plaintiff Yuli Conely as the administratrix of the decedent's estate repeats and realleges each and every allegation set forth in paragraphs "1" through "28" as if fully set forth at length herein.

30. By reason of the aforementioned, Liebe Ociele Medina, died on June 15th, 2007.

31. As a result of the wrongful death of decedent, plaintiff, Yuli Conely, daughter of decedent, and William Pulgarin, son of decedent, and other of the decedent's distributees have sustained pecuniary loss and damage as well as having been deprived of decedent's companionship, consortium and society and otherwise claim damages for her wrongful death.

32. By reason of the foregoing, plaintiff, Yuli Conely, as Administratrix of the Estate of Leibe Ociele Medina on behalf of decedent's distributees claims damages for her wrongful death in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

THIRD CAUSE OF ACTION

33. Plaintiff Ephraim Rivera repeats and realleges each and every allegation set forth in paragraphs "1" through "24" as if fully set forth at length herein.

34. As a result of the aforementioned occurrence plaintiff Ephraim Rivera was seriously injured.

35. By reason of the foregoing Ephraim Rivera was damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

FOURTH CAUSE OF ACTION

36. Plaintiff Raphael Rivera repeats and realleges each and every allegation set forth in paragraphs "1" through "24" as if fully set forth at length herein.

37. By reason of the aforementioned plaintiff Raphael Rivera sustained property damage to the Rivera boat.

38. By reason of the foregoing, plaintiff, Rafael Rivera has been damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

FIFTH CAUSE OF ACTION

39. Plaintiff Raphael Rivera repeats and realleges each and every allegation set forth in paragraphs "1" through "35" as if fully set forth at length herein.

40. As a result of the aforementioned occurrence plaintiff Raphael Rivera was present when his brother Ephraim Rivera was injured.

41. At the aforementioned time and place plaintiff Raphael Rivera was in the zone of danger and sustained psychological trauma.

42. By reason of the foregoing, plaintiff, Rafael Rivera has been damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

WHEREFORE, plaintiffs Yuli Conely, as Administratrix of the Estate of Leibe Ociele Medina, Ephraim Rivera and Rafael Rivera demand judgment on each of the first, second, third, fourth and fifth causes of action in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought together with interest, costs and the disbursements of this action.

Yours, etc.

SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C.

By: 

FRANK V. FLORIANI
Attorneys for Plaintiffs
120 Broadway - 18th Floor
New York, New York 10271
(212) 732-9000

VERIFICATION

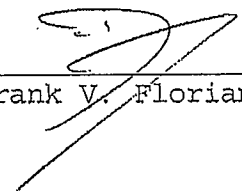
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Frank V. Floriani, being duly sworn, deposes and says:

I am a member of SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO
P.C., attorneys for the plaintiffs herein.

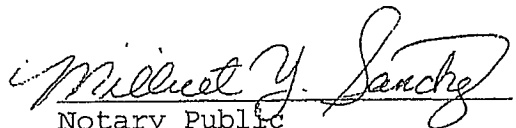
I have read the foregoing COMPLAINT and know the contents
thereof, and upon information and belief, deponent believes the
matters alleged therein to be true.

The source of deponent's information and the grounds of his
belief are communications, papers, reports and investigations
contained in the file.



Frank V. Floriani

Sworn to before me this
7th day of November, 2007



Notary Public

MILLICET Y. SANCHEZ
Notary Public, State of New York
No. 01SA6139553
Qualified in New York County
Commission Expires Jan. 9, 2010

Index No.

Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

YULI CONELY, as Administratrix of the Estate of
LEIBE OCIELE MEDINA, a/k/a CEILE MEDINA,
Deceased and YULI CONELY, Individually,
EPHRAIM RIVERA and RAPHAEL RIVERA
Plaintiffs,

-against-
SEABOATS, INC.,

Defendants.

SUMMONS AND COMPLAINT

SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.
Attorneys for plaintiff(s)

120 BROADWAY
NEW YORK, NEW YORK 10271
(212) 732-9000

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated:

Signature

Print Signer's Name

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐
NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

☐
NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. , one of the judges of the within-named Court,
at
on

20

, at

M.

Dated:

SULLIVAN PAPAIN BLOCK McGRATH & CANNAVO P.C.
Attorneys for

To:

120 BROADWAY
NEW YORK, NEW YORK 10271